

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

KAY DIANE ANSLEY, ET AL.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	1:15-CV-00274-MOC
	:	
STATE OF NORTH CAROLINA,	:	DISTRICT JUDGE
	:	MAX O. COGBURN, JR.
Defendant,	:	
	:	MAGISTRATE JUDGE
and	:	DENNIS L. HOWELL
	:	
BRENDA BUMGARNER, individually	:	
and on behalf of other similarly situated	:	
Jane and John Doe Magistrate Judges,	:	
	:	
Proposed Intervenor-	:	
Defendant.	:	
	:	

MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, North Carolina Magistrate Judge Brenda Bumgarner (“Bumgarner”), on behalf of herself and other similarly situated Jane and John Doe Magistrate Judges (collectively, “Magistrates”)¹, by and through her undersigned counsel, hereby moves to intervene in the above-referenced case on the side of Defendant State of North Carolina (“Defendant” or “State”), by right or, alternatively, by the Court’s permission.

¹ As indicated, this motion is being filed individually and on behalf of a proposed class of similarly situated Magistrates, some of whom may be willing to reveal their identity(ies) and others whom may desire to proceed in this action under a pseudonym to protect their identity(ies) for fear of harassment, intimidation, retaliation, termination of their position or retaliatory failure to re-appoint them to another term as a Magistrate based upon their decision to exercise their statutory right of recusal from performing marriages.

As set forth in the accompanying memorandum of law that is attached to this Motion, which is incorporated by reference here, Bumgarner and other similarly situated Magistrates satisfy the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a) because they stand to gain or lose by this Court's judgment on this challenge to the constitutionality of Senate Bill 2, and their rights and interests are not adequately represented in this lawsuit. This application to intervene is indisputably timely since the State has not even responded to Plaintiffs' Complaint. Also, Bumgarner and other similarly situated Magistrates possess sufficiently protectable interests in the subject matter of this litigation because they are the direct and intended beneficiaries of Senate Bill 2, and, upon exercising the recusal rights provided thereunder, now hold property interests in this statutory benefit. These rights and interests may be impaired and impeded by this Court's judgment in this matter, depending on the outcome. However, Bumgarner's (and other Magistrates') interests are not adequately represented in this matter by the Defendant, because its attorney, the North Carolina Attorney General, has publicly declared on several occasions that he is personally adverse to Senate Bill 2. In addition, he is currently running for governor and he has publicly stated that if he were governor, he would veto Senate Bill 2. As a result, Bumgarner's individual and constitutional interests are directly and substantially adverse to the declared position of the Attorney General, the primary defender of Senate Bill 2 in this litigation.

But even if Bumgarner may not intervene as of right, this Court should nonetheless permit Bumgarner to intervene because the issues, claims and defenses raised by Bumgarner and other similarly situated Magistrates share a common question of law with this action, and will not cause undue delay or prejudice to the existing parties. In fact, as the real beneficiaries of Senate Bill 2, Bumgarner's (and other Magistrates') participation will assist the Court in its review and

consideration of the sufficiency of Plaintiffs' Complaint under Rule 12 and, if Plaintiffs' Complaint survives the pleading stage, the constitutionality of Senate Bill 2.

In accordance with this Court's Local Rules, the undersigned counsel for Bumgarner contacted counsel for Plaintiffs and Defendant regarding their respective positions on Bumgarner's request to intervene in this lawsuit. Counsel for Plaintiffs represented that Plaintiffs would oppose any such request. Counsel for the Defendant State of North Carolina represented that the State neither objects nor consents to the intervention request.

Pursuant to Federal Rule of Civil Procedure 24(c), Bumgarner's proposed motion to dismiss Plaintiffs' Complaint is being contemporaneously filed herewith to accompany Bumgarner's motion to intervene. A proposed order and a declaration from Bumgarner are also being submitted with this motion.

WHEREFORE, North Carolina Magistrate Judge Brenda Bumgarner, individually and on behalf of other similarly situated Magistrates, respectfully requests that this Court enter an order allowing her to intervene in the above-referenced case on the side of the Defendant State of North Carolina, and to take such other and further actions are appropriate.

DATED: February 4, 2016

Respectfully submitted:

/s/ Jonathan D. Christman

Horatio G. Mihet*

Jonathan D. Christman*

Liberty Counsel

P.O. Box 540774

Orlando, Florida 32854

Tel: (407) 875-1776

Fax: (407) 875-0770

hmihet@lc.org

jchristman@lc.org

**Motion for pro hac vice admission pending*

/s/ Stuart D. Sloan

Stuart D. Sloan

Kenney Sloan & VanHook, PLLC

111 Heritage hollow Drive

Franklin, NC 28734

Tel: (828) 276-1177

Fax: (828) 276-1178

stu@ksvlaw.com

Attorneys for Brenda Bumgarner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and therefore service will be effectuated by the Court's electronic notification system upon all counsel or parties of record:

S. Luke Largess
Jacob H. Sussman
John W. Gresham
TIN FULTON WALKER & OWEN, PLLC
301 East Park Avenue
Charlotte, NC 28203
llargess@tinfulton.com
jsussman@tinfulton.com
jgresham@tinfulton.com

Katherine Lewis Parker
TIN FULTON WALKER & OWEN, PLLC
1213 Culbreth Drive
Wilmington, NC 28405
kparker@tinfulton.com

Meghann Burke
BRAZIL & BURKE, P.A.
77 Central Avenue, Suite E
Asheville, NC 28801
meghann@brazilburkelaw.com

Attorneys for Plaintiffs

DATED: February 4, 2016

Olga E. Vysotskaya de Brito
Amar Majmundar
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
ovysotskaya@ncdoj.gov
amajmundar@ncdoj.gov

*Attorneys for Defendant State of
North Carolina*

/s/ Stuart D. Sloan
Stuart D. Sloan
Attorney for Brenda Bumgarner